

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Julian Phillips	Team: Squad #5	CCRB Case #: 201810243	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 12/01/2018 2:01 PM	Location of Incident: [REDACTED]	Precinct: 102	18 Mo. SOL 6/1/2020	EO SOL 1/16/2021	
Date/Time CV Reported Sat, 12/01/2018 4:44 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 12/10/2018 11:07 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Moises Roman	11974	942876	102 PCT
2. POM Brett Strauss	07360	943848	102 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Wendy Rojas	00985	943926	102 PCT
2. POM Andrew Pugliese	19940	964225	102 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Brett Strauss	Force: Police Officer Brett Strauss used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
B.POM Moises Roman	Force: Police Officer Moises Roman used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
C.POM Moises Roman	Force: Police Officer Moises Roman restricted § 87(2)(b) [REDACTED]'s breathing.	[REDACTED]
D.POM Brett Strauss	Force: Police Officer Brett Strauss used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
E.POM Brett Strauss	Abuse: Police Officer Brett Strauss forcibly removed § 87(2)(b) [REDACTED] to the hospital.	[REDACTED]
F.POM Moises Roman	Abuse: Police Officer Moises Roman forcibly removed § 87(2)(b) [REDACTED] to the hospital.	[REDACTED]

Case Summary

On December 1, 2018, Sgt. Wendy Rojas of the 102nd Precinct filed this complaint by phone with IAB on behalf of § 87(2)(b)-year-old § 87(2)(b) generating original log number 18-47075. The CCRB received the complaint on December 10, 2018.

On December 1, 2018, at approximately 2:01 p.m., § 87(2)(b)'s mother, § 87(2)(b) called 911 to report a dispute with § 87(2)(b) at their residence at § 87(2)(b) in Queens. Police Officer Brett Strauss and Police Officer Moises Roman, both of the 102nd Precinct, responded to the location. EMT § 87(2)(b) and EMT § 87(2)(b) also went to the location. § 87(2)(b) asked the officers and EMTs to bring § 87(2)(b) to a hospital, as she refused to take medication for a mental health condition and had destroyed property in the apartment. § 87(2)(b) refused to allow the officers and EMTs to transport her to the hospital. PO Strauss and PO Roman attempted to handcuff § 87(2)(b) forcibly, and she fell to the ground during the ensuing struggle (**Allegations A-B: Force**, § 87(2)(g)). PO Roman allegedly restricted § 87(2)(b)'s breathing (**Allegation C: Force**, § 87(2)(g)). PO Strauss allegedly punched § 87(2)(b) (**Allegation D: Force**, § 87(2)(g)). PO Strauss and PO Roman ultimately assisted in the forcible removal of § 87(2)(b) to § 87(2)(b) (**Allegations E-F: Abuse of Authority**, § 87(2)(g)), where she received a psychiatric evaluation. As a result of the incident, § 87(2)(b) sustained bruising on the right side of her face, her shoulders, and her left chest. She also sustained a minor laceration to her left leg.

The investigation obtained BWC footage from PO Roman (BR01, summarized at BR18) and PO Strauss (BR02-03, summarized at BR19-20). All references to video evidence below refer to the time stamp in the video player, not the on-screen clock embedded in the video itself. The investigation first requested BWC footage on December 20, 2018, and did not receive the footage until May 30, 2019.

Findings and Recommendations

Allegation (A) Force: Police Officer Brett Strauss used physical force against § 87(2)(b)

Allegation (B) Force: Police Officer Moises Roman used physical force against § 87(2)(b)

It is undisputed that EMT § 87(2)(b) and EMT § 87(2)(b) determined that they would transport § 87(2)(b) to a hospital and informed her of this, that she refused to allow them to transport her, and that PO Strauss and PO Roman subsequently physically engaged with § 87(2)(b) in a manner that resulted in her going to the ground.

In her CCRB interview, § 87(2)(b) recounted that she was sitting on her bed when PO Strauss grabbed her arm and pulled her to a standing position (BR06). PO Strauss and PO Roman attempted to grab her arms as she told them to “get off” of her. She moved toward a nearby closet before falling to the floor such that she landed on her stomach with her hands behind her back. Her glasses fell off when she fell. In an earlier phone statement, § 87(2)(b) said that her face struck the floor when she fell, and that she sustained facial swelling as a result (BR21). However, at her interview she testified that she did not sustain any injuries from falling to the ground. She did not know how she sustained the minor laceration to her leg and was not aware of the injury until an EMT pointed it out to her later.

In a phone statement provided to an investigator from Patrol Borough Queens South Investigations, § 87(2)(b) explained that § 87(2)(b) cut her leg during the struggle with the officers by making contact with a sharp protrusion on a piece of furniture (BR22). Similarly, § 87(2)(b)'s medical records from § 87(2)(b) indicate that she cut her leg on a table while

struggling with the officers (see Privileged Documents). The Pre-Hospital Care Report, however, states that she cut her leg on the EMTs' "stair chair" when she tried to escape from it after being handcuffed (see Privileged Documents). The hospital records also note that a physical exam found bruises on her shoulders, left chest, and the right side of her face, as well as wrist tenderness. § 87(2)(b) did not complain of any pain at the hospital, and an X-ray of her wrist was unremarkable.

PO Strauss (BR07) and PO Roman (BR08) testified that they attempted to gain control of § 87(2)(b)'s arms once she made clear that she would not go to the hospital voluntarily. PO Strauss recounted that she resisted being handcuffed while standing up by rotating her body, flailing her arms, screaming, punching, and kicking. He believed she struck some part of his body with her hand at one point. He did not know if her kicks successfully connected with him or PO Roman. PO Strauss continued to attempt to grab § 87(2)(b)'s arms, but did not take any additional physical actions. He did not recall taking any specific action to induce § 87(2)(b) to fall to the ground. PO Roman similarly recounted that § 87(2)(b) rotated her body, and he described her raising a hand in a claw-like position and attempting to scratch PO Strauss' face. PO Roman did not recall taking any specific action to bring § 87(2)(b) to the ground, and he did not know why she went to the ground.

Both officers prepared TRI reports in which they noted that § 87(2)(b) used hand and foot strikes against them, wrestled or grappled with them, and pushed or shoved them (BR04-05). Both officers checked the box to denote that they performed a "forcible takedown."

The officers' BWC footage captured the entirety of the officers' and EMTs' interaction with § 87(2)(b) in the time leading up to the physical struggle (beginning at the 10:00 mark in BR01, at the 10:00 mark in BR02, and the 00:00 mark in BR03). The footage shows that § 87(2)(b) repeatedly told the officers to get off of her and not to touch her when they first grabbed her on the bed. She moved abruptly to her feet and backwards toward an open closet, and ultimately went to the ground. The footage does not show clearly what specific action led to § 87(2)(b) going to the ground. The footage confirms that she rolled around, moved her arms, and kicked out at the officers once on the ground. The footage also shows that the officers and § 87(2)(b) came into contact with numerous objects and pieces of furniture during the struggle.

NYPD Patrol Guide Procedure 221-01 states that officers may use force when it is reasonable to place a person in custody. The force used must be reasonable under the circumstances and not excessive (BR09).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (C) Force: Police Officer Moises Roman restricted § 87(2)(b)'s breathing.

Allegation (D) Force: Police Officer Brett Strauss used physical force against § 87(2)(b).

§ 87(2)(b)

The BWC footage depicting the physical struggle to handcuff § 87(2)(b) the relevant timestamps for which are noted above, shows that § 87(2)(b) began screaming when the officers first grabbed her and continued to scream throughout the struggle. Initially she repeatedly told the officers to get off of her and not to touch her. The struggle moved toward an open closet, and § 87(2)(b) briefly

was in a seated position as she kicked and flailed. Once on the ground, § 87(2)(b) and the officers moved back toward her bed. Approximately one minute into the struggle, § 87(2)(b) first began screaming that she could not breathe. The footage from PO Strauss' BWC (BR03, beginning at the 00:25 mark) shows that § 87(2)(b) was lying on her side and kicking when she first screamed that she could not breathe. She continued to scream that she could not breathe while, as seen in the BWC footage, she rolled onto her back and attempted to sit up against her bed. The officers then rolled her until she was on her stomach so they could handcuff her. The BWC footage does not provide a clear depiction of the officers' actions while they handcuffed § 87(2)(b) and she continued to scream that she could not breathe during that time. The BWC footage does not show PO Strauss punching § 87(2)(b) or otherwise indicate that he did so, but neither the officers nor § 87(2)(b)'s face are visible during the time that they handcuffed her. At the 12:00 mark in PO Roman's BWC footage (BR01), immediately after the officers handcuffed her, § 87(2)(b) screamed, "They punched me in my face!"

In her CCRB phone statement, § 87(2)(b) recounted that eventually she came to lie facedown on the floor, and she alleged that both officers pressed their arms and legs against her back while attempting to handcuff her. The pressure on her back restricted her breathing, and she told the officers as much. In her interview, she specified that PO Roman placed a knee on the middle of her back. § 87(2)(b) turned her head such that her right cheek faced upwards, and PO Strauss punched her mouth with his right fist one time, causing her to sustain a lip laceration. In her phone statement, § 87(2)(b) specified that PO Strauss punched her in the vicinity of her right eye.

§ 87(2)(b) provided a photograph of the right side of her face taken shortly after the incident, which shows a small, linear red mark near her right temple and cheekbone, as well as other diffuse redness (BR23). She did not provide any photographic documentation regarding any injury to her lip. As previously noted, her hospital medical records note that she had bruising on the right side of her face, though she did not complain of any pain. The records do not note any injury to her lip. The records also do not indicate that § 87(2)(b) ever told medical personnel that an officer punched her.

In her CCRB phone statement, § 87(2)(b) recounted that she witnessed the entire struggle, and she noted that the officers pinned down § 87(2)(b). She heard § 87(2)(b) say that she was having difficulty breathing. § 87(2)(b) categorically denied that either officer ever punched § 87(2)(b). § 87(2)(b) made similar statements by phone to the officer from Patrol Borough Queens South Investigations, and she indicated that she believed § 87(2)(b) would lie and claim that the officers used excessive force against her.

EMT § 87(2)(b) (BR11) and EMT § 87(2)(b) (BR12) both testified that they witnessed portions of the struggle between the officers and § 87(2)(b). Both EMTs denied seeing an officer press his knee against § 87(2)(b)'s back or punch § 87(2)(b) in the face.

The BWC footage shows that EMT § 87(2)(b) and EMT § 87(2)(b) were present in the room while the officers grappled with § 87(2)(b). However, there appear to be points at which their attention was directed toward § 87(2)(b) outside the room and away from the ongoing struggle. In the footage, § 87(2)(b) does not appear to have been in the room during the time that PO Roman allegedly restricted § 87(2)(b)'s breathing and PO Strauss allegedly punched her. Ultimately, the investigation could not determine what portions of the struggle § 87(2)(b) actually witnessed.

PO Roman acknowledged that he and PO Strauss leaned on § 87(2)(b)'s body in the process of restraining her on the ground and that she complained that she was unable to breathe. PO Roman denied that he pressed a knee into her back or otherwise applied pressure to it, and he denied that he

took any other actions which restricted § 87(2)(b)'s breathing. PO Roman assessed that § 87(2)(b) was able to breathe during the struggle. PO Strauss denied seeing PO Roman press a knee against § 87(2)(b)'s body and denied that either officer took any action which restricted § 87(2)(b)'s breathing.

PO Strauss denied punching § 87(2)(b) or otherwise using any hand strike against her, and PO Roman denied seeing him do so. PO Strauss acknowledged that his TRI report indicated that he used both hand and foot strikes against § 87(2)(b). He explained that he typically includes even relatively minor instances of physical contact on TRI reports as a precaution, and that he likely completed the report in that manner to document that his hands and feet made contact with § 87(2)(b) during the struggle.

§ 87(2)(g)

§ 87(2)(g)

Allegation (E) Abuse of Authority: Police Officer Brett Strauss forcibly removed § 87(2)(b) to the hospital.

Allegation (F) Abuse of Authority: Police Officer Moises Roman forcibly removed § 87(2)(b) to the hospital.

As noted above, it is undisputed that EMT § 87(2)(b) and EMT § 87(2)(b) determined that they would transport § 87(2)(b) to a hospital and that PO Roman and PO Strauss assisted in forcibly compelling § 87(2)(b) to do so.

§ 87(2)(b) acknowledged that § 87(2)(b) provided information to the 911 dispatcher regarding § 87(2)(b)'s psychiatric history and non-compliance with using medication prescribed to her related to a mental illness diagnosis. EMT § 87(2)(b) stated that § 87(2)(b) provided him with similar information at the incident location, and that she told him she wanted § 87(2)(b) brought to a hospital for an evaluation. The 911 call associated with this incident (BR13) involved an initial report of § 87(2)(b) engaging in a dispute, kicking a bedroom door, causing a babysitter to become frightened, and ultimately being deemed an Emotionally Disturbed Person (EDP).

Officers may, in the process of safeguarding a mentally ill or emotionally disturbed person who does not voluntarily seek medical assistance, use force to prevent physical injury. NYPD Patrol Guide, Procedure 221-13 (BR14).

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR15).
- PO Strauss has been a member of the NYPD for 13 years and has been a subject in eleven CCRB complaints and 26 allegations, of which one was substantiated:
 - 201708850 involved a substantiated allegation of premises entered and/or searched against PO Strauss. The Board Recommended Command Discipline B, and the NYPD imposed no penalty.
 - § 87(2)(g)
- PO Roman has been a member of the NYPD for 13 years and has been a subject in three CCRB complaints and four allegations, none of which was substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of August 2, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this complaint (BR16).
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York State (BR17).

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date